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Jerome Glasser

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04/21/2010

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EXAMINER

SANDY, ROBERT JOHN

ART UNIT

PAPER NUMBER

3677

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/715,669 | Applicant(s) GLASSER, JEROME | |
| | Examiner Robert J. Sandy | Art Unit 3677 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49-66 is/are pending in the application.
- 4a) Of the above claim(s) 54, 56-58 and 60-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49, 50, 52, 53, 55, 59 and 66 is/are rejected.
- 7) ☒ Claim(s) 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Species 1 in the supplemental reply filed on 12/22/2009 is acknowledged. In the reply filed on 08/30/2009, applicant summararily presents the traversal on the ground(s) that Species 1 should be considered to correspond to the embodiments represented by Figs. 22, 23, and 42 in addition to Figs. 9 and 10. In the restriction requirement mailed on 05/05/2009, the embodiment shown in Fig. 42 was designated as Species 2, and the embodiment shown in Figs. 22 and 23 was designated as Species 4.

In view of applicant's traversal, it is agreed that Species 1 shall encompass the embodiments shown in Figs. 9, 10, 22, 23 and 49.

Applicant has also identified the elected species to correspond to claims 49-53, 55, 59, 65 and 66. However, since claim 65 is dependant upon a non-elected claim 64, claim 65, in addition to claims 54, 56-58, and 60-64, are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species (i.e., Species 3, 5 & 6), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/22/2009.

The requirement is still deemed proper and is therefore made FINAL.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the written specification provide there is no antecedent basis support the term "cruciform" in describing the ribs required in at least claims 1 and 59; and the "border edges" recited in claim 59.

Claim Objections

Claims 51, 53, and 66 are objected to because of the following informalities:

In claim 50, bridging lines 5 and 6, recitation of “on a surface of at least one planar member, at least two substantially straight,” is not grammatically correct and appears to have been intended to read, - - on a surface of at least one planar member being at least two substantially straight, - -.

In claim 51, line 3, “a first substantially planar member” should have read - - said substantially planar member - -.

In claim 51, line 4, “a second substantially planar member” should read - - said second substantially planar member- -.

In claim 51, line 7, “means for joining” should have read - - said means for joining - -.

In claim 51, line 8, “means for the exertion of an interiorly directed pressure” should have read - - said interiorly directed pressure - -.

In claim 51, line 9, “substantially planar members is a gradient surface” should have read - - substantially planar members is provided by a gradient surface - -.

In claim 51, line 10, “least one substantially planar member forming ” should have read - - least one of the substantially planar members forming - -.

In claim 53, line 3, “said means for the exertion of an interiorly directed pressure” should have read - - said interiorly directed pressure - -.

In claim 53, line 4, “substantially planar members is a textured, ..” should have read - - substantially planar members is provided by a textured - -.

In claim 66, line 7, the period (.) immediately following the term “members” should be changed to a semi-colon (;). Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 55, 59 and 66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 55, line 6, there is no antecedent basis for "said opposite surface".

In claim 59, line 7, there is no antecedent basis for "the border edges".

In claim 66, line 6, there is no antecedent basis for "the border edges".

In claim 66, bridging lines 6 and 7, there is no antecedent basis for "said first and second substantially planar members".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 49, 50, 59 and 66, so far as definite, are rejected under 35 U.S.C. 102(b) as being anticipated by Maharg (U. S. Patent No. 5,494,178).

Regarding claim 49, Maharg ('178) discloses a device (10, see Fig. 5) capable of holding a plurality of items, comprising: a first substantially planar member (11), a second substantially planar member (12) substantially adjacent to the first substantially planar member, located between the first and second substantially planar, substantially adjacent members is a central hub (central intersection of members 17) therebetween having cruciform ribs (17) situated at 90-degree right angles in perpendicular relation to each other and extending radially from the central hub, which define a frictional mounting space (defined between 11, 12).

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Regarding claim 50, Maharg ('178) discloses a device (10, see Fig. 5) capable of holding a plurality of items for display, comprising: a first substantially planar member (11) having a front and a back surface; a second substantially planar member (12) having a front and a back surface; on a surface of at least one planar member, at least two substantially straight, smooth and linear, raised, co-planar ribs (17) having a predetermined thickness and lying at 90-degree right angles in perpendicular relation to each other, thereby forming a cross-shaped configuration having a central hub (central intersection of members 17) and extending radially outward therefrom; means (longitudinally extending end portions of respective ribs 17 integrally joining the respective member 11, 12) for joining the first and second substantially planar members wherein the substantially straight and smooth, linear, raised, co-planar ribs are located there-between, thereby defining multiple spatial cavities (each cavity defined between members 11, 12 and two adjacent ribs 17) suitable for the introduction therein of at least one display item, and so that an interiorly directed pressure between the first and second substantially planar members is capable of exerting on the at least one display item therein.

Regarding claim 59, Maharg ('178) discloses a device (10, see Fig. 5) capable of holding a plurality of items, comprising: a first substantially planar member (11), a second substantially planar member (12) substantially adjacent to the first substantially planar member, located between the first and second substantially planar, substantially adjacent members defining a frictional mounting space (defined between 11, 12), cruciform ribs (17) situated at 90-degree right angles in perpendicular relation to each other and positioned substantially perpendicular to border edges of the first and second substantially planar members.

Regarding claim 66, Maharg ('178) discloses a device (10, see Fig. 5) capable of holding a plurality of items for display, comprising: a substantially planar member (11) having a front and a back surface; on a surface of said substantially planar member, at least two substantially straight, smooth and linear, raised, co-planar ribs (17) having a predetermined thickness and lying at 90-degree right angles in perpendicular relation to

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each other, and positioned substantially perpendicular to the border edges of said first and second substantially planar members; means (12) for maintaining substantially adjacent contact between said at least one substantially planar display item, and said substantially planar member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maharg ('178). Maharg ('178) discloses the claimed device except for wherein the means for joining the first and second substantially planar members is glue. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have glued the member 11 and 12 to the ribs 17, instead of integrally forming the members 11 and 12, and ribs 17 as one piece, since gluing separate members 11 and 12 and ribs 17 together would produce the same end result of the claimed device. Furthermore, applicant hasn't disclosed that the glue solves any stated problem, is of any particular purpose, or produces any unexpected.

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maharg ('178) in view of Fusillo (U. S. Patent No. 5,473,796, cited by examiner). Maharg ('178) discloses the claimed device except of wherein the interiorly directed pressure between said first and second substantially planar members is a textured, friction-imparting surface. Fusillo (796) teaches a textured, friction-imparting surface (i.e., via teeth 38) on an interiorly facing surface of each member 12 and 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the textured, friction-imparting surface, as taught by Fusillo ('796), between the first and second planar members 11, 12 of Maharg ('178) in order to better grip and retain an article inserted between the planar members.

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Allowable Subject Matter

Claim 51 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the claim objections set forth in this Office action, and rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 55 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the former pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 571-272-7073. The examiner can normally be reached on M-F (7:30-4:00).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J. Sandy/
Primary Examiner, Art Unit 3677